



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2017-0589; A-1-FRL-9972-21-Region 1]

Air Plan Approval; VT; Nonattainment New Source Review and Prevention of Significant Deterioration Permit Program Revisions; Infrastructure Requirements for National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve several different revisions to the State Implementation Plan (SIP) submitted to EPA by the Vermont Department of Environmental Conservation (VT DEC). On May 23, 2017, Vermont submitted revisions to EPA satisfying the VT DEC's earlier commitment to adopt and submit revisions that meet certain requirements of the federal Prevention of Significant Deterioration (PSD) air permit program. Vermont's submission also included revisions relating to the federal nonattainment new source review (NNSR) permit program. This action proposes to approve those revisions and also proposes to fully approve certain of Vermont's infrastructure SIPs (ISIPs), which were conditionally approved by EPA on June 27, 2017. Additionally, EPA is proposing to approve several other minor regulatory changes to the SIP submitted by VT DEC on May 23, 2017. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2017-0589 at <http://www.regulations.gov>, or via email to wortman.eric@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Eric Wortman, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square – Suite 100, (Mail Code OEP05-2), Boston, MA 02109-3912, phone number (617) 918-1624, fax number (617) 918-0624, email wortman.eric@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Vermont’s May 23, 2017 SIP Submittal Addressing EPA’s June 27, 2017 Conditional Approval Regarding PSD Elements of Infrastructure SIPs

A. What is the background information for EPA’s June 27, 2017 conditional approval?

On June 27, 2017, EPA published a final conditional approval of certain elements of Vermont’s ISIPs. *See* 82 FR 29005. That conditional approval identified two provisions required under the federal

PSD permit program regulations that were not included in the State's ISIPs submittal. In a letter dated November 21, 2016, the VT DEC committed to revising its PSD permit program regulations to address the identified issues and submit the revised regulations to EPA for approval no later than one year after the effective date of EPA's final action conditionally approving the ISIPs. The conditional approval was part of EPA's June 27, 2017 final action on the VT DEC's ISIP submittals for the 1997 fine particulate matter (PM_{2.5}), 1997 ozone, 2006 PM_{2.5}, 2008 Lead, 2008 ozone, 2010 nitrogen dioxide (NO₂), and 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). The VT DEC submitted the revised PSD permit program regulations for our full approval on May 23, 2017.

B. What is a conditional approval?

Under section 110(k)(4) of the CAA, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain no later than one year from the effective date of final conditional approval. If EPA subsequently determines that the State has met its commitment, EPA publishes a document in the Federal Register notifying the public that EPA is converting the conditional approval to a full approval.

However, if the State fails to meet its commitment in a timely manner, then the conditional approval automatically converts to a disapproval by operation of law without further action required by EPA. If that were to occur, EPA would then notify the State by a letter. At that time, the conditionally approved SIP revisions would not be part of the State's approved SIP. EPA subsequently would publish a document in the Federal Register notifying the public that the conditional approval automatically converted to a disapproval.

EPA's June 27, 2017 conditional approval required the VT DEC to submit revised regulations that address two separate provisions of EPA's PSD permit program regulations that were not included in Vermont's approved SIP. To address the conditional approval, on May 23, 2017, the VT DEC

submitted regulatory revisions for approval into the State's SIP. The revisions addressed the following federal PSD requirements:

- 40 CFR 51.166(b)(2)(ii), which requires nitrogen oxides (NO_x) and volatile organic compounds (VOC) emissions to be included as precursors to ozone in defining a significant increase in emissions from a source of air contaminants; and
- 40 CFR 51.166, which provides a methodology for determining the amount of PSD increment available to a new or modified major source.

C. Were the terms of the June 27, 2017 conditional approval met?

On December 15, 2016, VT DEC revised the Vermont Air Pollution Control Regulations (APCR) to address the two provisions identified in EPA's June 27, 2017 conditional approval. Specifically, the definition of "significant" in APCR §5-101(80) was revised to define the significant emissions rate increase for ozone as 40 tons or greater of either VOCs or NO_x as ozone precursors. In addition, VT DEC revised APCR §§5-502(4)(c) and 5-502(5)(a) and (b) to require that PSD increment reviews and the determination of remaining PSD increment be conducted or determined in accordance with the applicable regulations at 40 CFR 51.166. EPA has determined that the revisions made to the Vermont APCR are consistent with the underlying federal PSD regulations in 40 CFR part 51.

As noted previously, on May 23, 2017, the VT DEC submitted to EPA regulatory revisions to address the two provisions identified in the June 27, 2017 conditional approval. EPA has reviewed VT DEC's regulatory revisions and found they meet the terms of the June 27, 2017 conditional approval. Accordingly, EPA is proposing to convert the June 27, 2017 conditional approval to a full approval.

II. Proposed Approval of Vermont's May 23, 2017 SIP Submittal Revising Regulations for NNSR and PSD

The VT DEC's May 23, 2017 submittal also requested that the requirements in Vermont's NNSR and PSD permit program at APCR §§5-501(9) and 5-502(9) be added to the Vermont SIP. The provision at §5-501(9) clarifies that no action under §5-501 relieves any person from complying with any other requirements of local, state, or federal law. This statement provides general information for the public and regulated community regarding applicable regulations and is appropriate for addition to the Vermont SIP. APCR §5-502(9) requires an alternative site analysis to be conducted when: 1) a source or modification that is major is proposed to be constructed in a non-attainment area; or 2) a source or modification is major for ozone and/or precursors to ozone. This provision is consistent with NNSR permit program requirements in section 173(a)(5) of the CAA and the additional requirements for states in the ozone transport region (OTR), such as Vermont, outlined in CAA section 184.¹ Therefore, EPA is proposing this provision is appropriate for inclusion in the Vermont SIP.

III. Proposed Approval of Vermont's May 23, 2017 SIP Submittal Revising Prohibition Regulations on Particulate Matter

VT DEC submitted revisions to APCR §§5-231(4) and (5) as part of its May 23, 2017 SIP submittal. APCR §5-231(4) was revised to prohibit a process operation to operate without taking reasonable precautions to prevent particulate matter from becoming airborne. APCR §5-231(5) was revised to update and replace the term "Asphalt Concrete Plant" with the more commonly used term "Hot Mix Asphalt Plant." EPA has reviewed these revisions and is proposing to approve them into the Vermont SIP. The revised regulations are no less stringent than the previous SIP approved versions and thus will not interfere with any applicable requirement concerning attainment and reasonable further

¹ CAA section 184 details specific requirements for a group of states (and the District of Columbia) that make up the OTR. States in the OTR are required to mandate a certain level of emissions control for the pollutants that form ozone, even if the areas in the state meet the ozone standards. Thus, VT DEC is required to treat precursors to ozone as a nonattainment pollutant even though the State is designated attainment for the ozone NAAQS.

progress, or any other applicable requirement of the CAA, in accordance with section 110(l) of the CAA.

IV. Proposed Approval of Vermont's May 23, 2017 SIP Submittal Revising Work Practice Standards for Wood Furniture Manufacturers

In the May 23, 2017 SIP package, VT DEC submitted revisions to the work practice standards for wood furniture manufacturing operations at APCR §5-253.16(d)(8). The provision was amended to limit the use of conventional air spray guns to apply finishing materials only when all emissions from the finishing application station are routed to a functioning control device. The revised provision is consistent with the corresponding federal requirement at 40 CFR 63.803(h) in the National Emission Standards for Hazardous Air Pollutants for Wood Furniture Manufacturing Operations at 40 CFR part 63, subpart JJ. The federal requirement at 40 CFR 63.803(h) was revised on November 21, 2011 (76 FR 72050) and Vermont updated its regulations at APCR §5-253.16(d)(8) to provide consistency with the federal regulations. EPA has analyzed the revisions to APCR §5-253.16(d)(8) and determined that the requirements satisfy the Reasonably Available Control Technology (RACT) requirements recommended by the Control Techniques Guidelines (CTG) for wood manufacturing operations.² Because the revisions are more stringent than the requirements in the previously approved SIP, VT DEC has satisfied the approval requirements contained in section 110(l) of the CAA. Therefore, EPA is proposing to approve this requirement into the Vermont SIP.

V. Proposed Approval of Vermont's May 23, 2017 SIP Submittal Revising Approved Methods for Sampling and Testing of Sources

² See CTG for Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations. Document ID: EPA-453/R-96-007. April, 1996.

Vermont's May 23, 2017 submittal included minor revisions made to APCR §5-404, Methods for Sampling and Testing of Sources, that provided additional testing options and requirements for sources required to perform stack testing. Specifically, the revision adds 40 CFR part 51, Appendix M, as a testing option and requires that all other methods be approved by the Air Pollution Control Officer and EPA, as opposed to just the Air Pollution Control Officer. We have reviewed these revisions and are proposing to approve them into the Vermont SIP. These revisions are consistent with CAA section 110(l).

VI. Proposed Action

EPA's review of Vermont's May 23, 2017 submittal indicates that the submittal satisfies the requirements of the CAA and is appropriate for inclusion into the VT SIP. EPA therefore is proposing to approve the Vermont SIP revisions discussed in this action. Also, as a result of our proposed approval of the PSD permitting revisions discussed in section I above, EPA is also proposing to convert the June 27, 2017 conditional approval of Vermont's ISIPs to a full approval. EPA is soliciting public comments on the issues discussed in this action or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

VII. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference into the Vermont SIP the revisions to Vermont's APCR Chapter 5 as described in this document. EPA has made, and will continue to make, these materials generally available through

www.regulations.gov, and/or at the EPA Region 1 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 6, 2017.

Ken Moraff,
Acting Regional Administrator,
EPA New England.

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